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In the Supreme Court of the United States

OCTOBER TERM, 1941

KEYSTONE FREIGHT LINES, INC., a Corporation,
Petitioner,

VERSUS

LEE WAY MOTOR FREIGHT, INC., a Corporation; POWELL BROS. TRUCK LINES, INC., a Corporation; CLANTON TRANSPORTATION COMPANY, a Corporation; PANHANDLE MOTOR LINES, a Corporation; RISS & COMPANY, INC., a Corporation; CAIN'S TRUCK LINES; THE SANTA FE TRAILS TRANSPORTATION COMPANY; and RALPH W. PORTER, Executor of the Estate of ERNEST W. LYMAN, Deceased, Sole Owner and Doing Business Under the Firm Name and Style of Lyman Truck Lines,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS OF THE COURTS BELOW

The district court filed one opinion, entered January 24, 1941. It was written by District Judge Edgar S. Vaught. This opinion, though dealing primarily with the denial of the petition of intervention of the Union, does also cover to some extent the merits of the case. No opinion was filed by the district court in connection with the permanent decree of mandatory injunction. The findings of

fact and conclusions of law upon which the decree is based are at page 83 and following of the record.

The Circuit Court of Appeals filed two opinions, the first one affirmed the above-mentioned opinion of the district court denying the Union permission to intervene. This opinion is reported in 123 Fed. (2d) 326 (Judges PHILLIPS, BRATTON and HUXMAN, Judge BRATTON writing), and is dated October 24, 1941. The opinion on the merits (Judges PHILLIPS, BRATTON and MURRAH, Judge BRATTON writing) is dated March 18, 1942, and appears at page 108 of the record. It is reported in 126 Fed. (2d) 931.

JURISDICTION

Petitioner seeks a review by certiorari under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A. 347, of the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, entered March 18, 1942.

STATEMENT OF THE CASE

The essential facts of the case are stated in the foregoing and accompanying petition for certiorari, and for the sake of brevity, we will not repeat them here.

SPECIFICATION OF ERRORS

(1) The Circuit Court of Appeals erred in reversing the trial court with instructions to dismiss the case upon the grounds that the trial court was without jurisdiction to enter the mandatory injunction under the Norris-La Guardia Act.

(2) The Circuit Court of Appeals erred in holding that there was a labor dispute involved within the purview of the Norris-La Guardia Act, and that the trial court was without jurisdiction to enter the mandatory injunction unless the requirements of said Act were met.

(3) The Circuit Court of Appeals erred in holding that the Norris-La Guardia Act applied to this case, where no employees, labor unions or members thereof were parties to the suit, and where neither wages, hours, conditions of employment nor representation of employees were involved in the suit.

SUMMARY OF THE ARGUMENT

Point I.

The Circuit Court of Appeals, in probable conflict with the applicable decisions of this Court, held that there was a labor dispute involved in this case within the purview of the Norris-La Guardia Act.

Point II.

The question involved is one of great public importance which the Circuit Court of Appeals has erroneously decided in reversing the trial court, and is a question of which this Court should take jurisdiction and set at rest.

ARGUMENT

Point I.

The Circuit Court of Appeals, in probable conflict with the applicable decisions of this Court, held that there was a labor dispute involved in this case within the purview of the Norris-La Guardia Act.

The decision of the Circuit Court of Appeals is not in harmony with the decision of this Court in *Columbia River Packers Association, Inc.*, v. *H. B. Hinton et al.*, — U. S. —, 62 S. Ct. 520, 86 L. ed. 441 (Ad. Ops.), decided after the argument and submission of the case (R. 108), and of which no notice is taken in the opinion of the Circuit Court.

In that case, the Court held that a labor dispute was not involved within the purview of the Norris-La Guardia Act, notwithstanding the fact that a labor union was a party, since wages, hours and conditions of employment were not involved. The case at bar was instituted to enforce by coercive writ the performance by common carriers of their duties under the Federal Motor Carrier Act of 1935, as amended, 49 U. S. C. A. 301-327, and compliance with the joint through rates embodied in the tariffs such carriers had on file with the Interstate Commerce Commission.

A common carrier can be compelled by coercive writs of mandamus, mandatory injunctions and otherwise to perform its duties under the statutes and common law. *Peoria & Pekin Union Railway Company* v. *United States*, 263 U. S. 528, 44 S. Ct. 194, 68 L. ed. 427; *Missouri Pacific Railway Company* v. *Larabee Flour Mills Company*, 211 U. S. 612, 29 S. Ct. 214, 53 L. ed. 352.

Even the broad definition of a "labor dispute" in the

Norris-La Guardia Act is not extensive enough to expand the coverage of the Act to include a situation of this kind and a suit where neither employees, labor unions nor their members are parties.

It was never the intention of Congress to emasculate effective enforcement of the duties of the common carriers of the Nation to the public by enactment of the Norris-La Guardia Act, but that is the effect of the holding of the Circuit Court of Appeals. To avoid reaching such an unreasonable conclusion, the Court will go so far as to disregard the plain meaning of the words of the statute. *United States* v. *Rosenblum Truck Line*, — U. S. —, 62 S. Ct. 445, 86 L. ed. 387, 390; *United States* v. *American Trucking Association*, 310 U. S. 534, 543, 60 S. Ct. 1059, 84 L. ed. 1345, 1350.

Point II.

The question involved is one of great public importance which the Circuit Court of Appeals has erroneously decided in reversing the trial court, and is a question of which this Court should take jurisdiction and set at rest.

We have said that the question involved is one of great national significance. It affects the entire motor carrier industry and the shipping public. More than that, it casts grave doubt upon the power vested in the Interstate Commerce Commission to perform the duties placed upon it by Congress in the Interstate Commerce Act (49 U. S. C. A., Section 1 *et seq.*) in enforcing the obligations resting upon common carriers to the public, both by said Act and under the common law.

Recently, the Commission had before it a case practically identical with the case at bar[1]. The Teamsters Union was allowed to intervene. It was held that the refusal or failure of the motor carrier respondents to transport the freight of the complainant under a situation like the present one, was unlawful, and the Commission ordered such carriers to cease and desist from such unlawful practice.

If this is sought to be enforced in the Federal Court by a coercive writ, since the Commission cannot enforce it, it was not the intention of the framers of the Constitution that the Norris-La Guardia Act should stand as a bar.

There is no real distinction between that sort of case and the case at bar where the suit is originally commenced in the district court to compel the performance of the same duties by the same sort of writ.

Of course, it might be said that the Interstate Commerce Commission could cause the certificate of convenience and necessity of the carrier to be revoked, but this does not accomplish the ultimate proceeding in the first place, that is, to secure service to the public.

Reflecting light upon the importance of this question is the language of the trial court in 37 F. S. 635:

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1. *Planters Nut & Chocolate Company* v. *American Transfer Company*, 31 M. C. C. 719, decided January 21, 1942 (not yet available in bound volume). The pertinent portions of the opinion of the Interstate Commerce Commission are set out in the Appendix, for the convenience of the Court. The opinion is not reproduced in full because of its length.

> "The Norris-La Guardia Act is a long step from the rules theretofore existing, and it is clear that the sole purpose of this Act is to prevent injunctive relief against labor unions or employees who are members of a labor union. It is apparent from reading the Norris-La Guardia Act that Congress did not omit anything that might be a protection to labor unions, and we are not criticizing the Act, but certainly it was not contemplated by Congress, nor even by the labor unions themselves, that courts would extend and enlarge the powers granted to labor unions to such an extent that it would give such unions the right to interfere boldly and by written contracts with the enforcement of the laws of the United States."

And the ultimate result will be to render an important feature of the Interstate Commerce Act ineffective, as Judge VAUGHT said:

> "In the case at bar, if this plaintiff cannot continue its interstate transportation under the provision of the Motor Carrier Act without the consent of the Local Union, then in effect we are admitting, as courts, that a statute of the United States is ineffective unless consent to its enforcement is granted by local labor unions."

The great importance of this question is plain when it is realized that the decision of the Circuit Court ofAppeals means that wherever a shipper is involved in a labor dispute, the Norris-La Guardia Act prevents the enforcement of the duties of a common carrier under its tariffs, the Interstate Commerce Act and the common law.

The decision of the Circuit Court of Appeals carries the expanse of the Norris-La Guardia Act beyond the fur-

thest frontiers of the decisions of the Court defining the intention and background of Congress. *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U. S. 91, 85 L. ed. 63; *New Negro Alliance* v. *Sanitary Grocery Company*, 303 U. S. 552, 82 L. ed. 1012.

This case is not of the sort brought under the Sherman Anti-Trust Act, which this Court has said the legislative history of the Norris-La Guardia Act shows was sought to be limited.

In no case before this Court construing the Norris-La Guardia Act has the question been presented of the effect of that Act upon the enforcement of the Interstate Commerce Act.

CONCLUSION

The petitioner respectfully urges that the decision of the Circuit Court of Appeals reversing the trial court is contrary to the earlier decisions of this Court and to sound principles of statutory construction; that the questions presented are of grave importance to the public generally and unless the errors in the decision of the Circuit Court are corrected, the power to enforce the duties of common carriers under the Interstate Commerce Act and the common law will be emasculated.

Respectfully submitted,

JOHN B. DUDLEY,
DUKE DUVALL,
Counsel for Petitioner.

June, 1942.